

Jeffrey B. Maltzman, CA Bar No. 131758
Edgar R. Nield, CA Bar No. 135018
Gabrielle De Santis Nield, CA Bar No. 110930
MALTZMAN & PARTNERS, P.A.
5857 Owens Avenue, Suite 300
Carlsbad, CA 92008
Telephone: (760) 942-9880
jeffreym@maltzmanpartners.com
ed@maltzmanpartners.com
gab@maltzmanpartners.com

Attorneys for Defendant, PRINCESS CRUISE LINES, LTD.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUSAN B. HODGE,

Plaintiff,

vs.

PRINCESS CRUISE LINES, LTD.,
SHEVAUN VAN ZYL, M.D., AND
DOES 1-10,

Defendants.

CASE NO.: 2:24-CV-00620-FLA (ASx)

**DEFENDANT PRINCESS CRUISE
LINES, LTD.'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

Judge: Hon. Fernando L. Aenlle-Rocha
Magistrate: Hon. Alka Sagar
Filed: 1/23/2024

PRINCESS CRUISE LINES, LTD. (hereinafter "Princess" or "Defendant"), by and through their undersigned counsel, hereby responds to Plaintiff's Complaint for Damages for Personal Injuries and Demand for Jury Trial [ECF #1] (the "Complaint") and files its Answer and Affirmative Defenses as follows. The numbered paragraphs below correspond to the allegations in each identically numbered paragraph in Plaintiff's Complaint:

Jurisdiction and Venue

1. The allegations constitute legal conclusions to which no response is appropriate or required. To the extent a response is required, Defendant admits that Plaintiff's claims are governed by maritime law. Except as expressly admitted,

5857 OWENS AVE, SUITE 300
CARLSBAD, CA 92008
TELEPHONE: (760) 942-9880

1 Defendant denies the remaining allegations.

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies them.

1 appropriate or required. To the extent a response is required, Defendant Princess
2 lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations directed to Doe Defendants 1 through 10 and therefore denies them.
4 Except as expressly admitted, Defendant denies the remaining allegations.

5 **General Allegations**

6 10. Admitted.

7 11. To the extent the allegations purport to summarize or state the contents
8 of documents, those documents speak for themselves, and Defendant Princess
9 denies any characterization that is inconsistent with their content. All else is denied.

10 12. To the extent the allegations purport to summarize or state the contents
11 of documents, those documents speak for themselves, and Defendant Princess
12 denies any characterization that is inconsistent with their content. All else is denied.

13 13. To the extent the allegations purport to summarize or state the contents
14 of documents, those documents speak for themselves, and Defendant Princess
15 denies any characterization that is inconsistent with their content. All else is denied.

16 14. The allegations constitute legal conclusions to which no response is
17 appropriate or required. To the extent a response is required, denied as phrased.

18 15. The allegations constitute legal conclusions to which no response is
19 appropriate or required. To the extent a response is required, denied.

20 16. Denied as phrased.

21 17. To the extent the allegations purport to summarize or state the contents
22 of documents, those documents speak for themselves, and Defendant Princess
23 denies any characterization that is inconsistent with their content. All else is denied.

24 18. Denied.

25 19. Denied as phrased.

26 20. Denied.

27 21. Denied.

28 22. Denied.

The Incident

23. Defendant admits that Plaintiff was a passenger onboard the vessel on or about the date alleged. To the extent the allegations purport to summarize or state the contents of documents, those documents speak for themselves, and Defendant Princess denies any characterization that is inconsistent with their content. All else is denied.

24. To the extent the allegations purport to summarize or state the contents of documents, those documents speak for themselves, and Defendant Princess denies any characterization that is inconsistent with their content. All else is denied.

25. To the extent the allegations purport to summarize or state the contents of documents, those documents speak for themselves, and Defendant Princess denies any characterization that is inconsistent with their content. All else is denied.

26. To the extent the allegations purport to summarize or state the contents of documents, those documents speak for themselves, and Defendant Princess denies any characterization that is inconsistent with their content. All else is denied.

27. To the extent the allegations purport to summarize or state the contents of documents, those documents speak for themselves, and Defendant Princess denies any characterization that is inconsistent with their content. All else is denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

First Cause of Action Against Defendant Princess

(Negligence-General Maritime Law)

32. Defendant incorporates herein by reference its responses to Paragraphs 1 to 31 of this Answer, *supra*, as if set forth fully herein.

33. The allegations constitute legal conclusions to which no response is appropriate or required. To the extent a response is required, Defendant Princess

denies that it breached any duties owed to Plaintiff. All else is denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

**Second Cause of Action Against Defendant Van Zyl and Does 1 through 10
(Negligence-General Maritime Law)**

39. Defendant incorporates herein by reference its responses to Paragraphs 1 to 38 of this Answer, *supra*, as if set forth fully herein.

40. Defendant Princess lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed to Defendant Van Zyl and Does 1 through 10 and therefore denies them.

41. Defendant Princess lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed to Defendant Van Zyl and Does 1 through 10 and therefore denies them.

42. Defendant Princess lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed to Defendant Van Zyl and Does 1 through 10 and therefore denies them.

43. Defendant Princess lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed to Defendant Van Zyl and Does 1 through 10 and therefore denies them.

44. Defendant Princess lacks knowledge or information sufficient to form a belief as to the truth of the allegations directed to Defendant Van Zyl and Does 1 through 10 and therefore denies them.

**Third Cause of Action Against Defendant Princess
(Negligence-Vicarious Liability Under *Respondeat Superior*)**

45. Defendant incorporates herein by reference its responses to Paragraphs

1 to 44 of this Answer, *supra*, as if set forth fully herein.

46. Denied.

47. Denied.

48. Denied.

49. The allegations constitute legal conclusions to which no response is appropriate or required. To the extent a response is required, Defendant Princess denies that it breached any duties owed to Plaintiff. All else is denied.

50. Defendant Princess denies that it breached any duties owed to Plaintiff. All else is denied.

51. Denied.

**Fourth Cause of Action Against Defendant Princess
(Negligence-Vicarious Liability Under Apparent Agency)**

52. Defendant incorporates herein by reference its responses to Paragraphs 1 to 51 of this Answer, *supra*, as if set forth fully herein.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Defendant Princess denies that it breached any duties owed to Plaintiff. All else is denied.

60. Denied.

Prayer

WHEREFORE clause: Princess denies that Plaintiff is entitled to any relief whatsoever, including general, special, or exemplary damages, interest, costs, medical expenses, a jury trial, attorney's fees or any other relief. Defendant denies the remaining allegations.

Demand for Jury Trial

Princess denies that Plaintiff is entitled to a jury trial.

AFFIRMATIVE DEFENSES

Based on the facts and information known to date, and subject to amendment following further investigation of the facts, and without waiver of any rights, privileges, or defenses, Defendant Princess states the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are governed by general maritime law and any recovery is limited by same, as well as by California law to the extent such law does not conflict with maritime law.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are governed by, and subject to, the terms, limitations, and conditions contained within the contract for passage and the Defendant adopts and incorporates the contract for passage into the answer by reference.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's acts and omissions were the sole, proximate cause of alleged injuries, if any.

FIFTH AFFIRMATIVE DEFENSE

The incident and injuries alleged by the Plaintiff, if any, were the result of superseding, intervening, and/or unforeseeable causes from which Princess had no duty to protect Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff failed to act timely and reasonably and/or failed to exercise due care in order to minimize or mitigate damages.

SEVENTH AFFIRMATIVE DEFENSE

The damages allegedly suffered by the Plaintiff were not the result of any act

1 or omission on the part of Defendant but were caused by Plaintiff's pre-existing
2 injuries and/or other trauma or illness suffered by Plaintiff. To the extent that
3 Princess is liable for aggravating any pre-existing injury, illness or condition, which
4 Princess specifically denies, Plaintiff's damages should only be for an amount
5 commensurate with the degree that Plaintiff's pre-existing injury, illness or
6 condition was aggravated by the conduct or omission of Princess.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 The injuries or damages suffered by Plaintiff, if any, were solely caused by
9 the actions and/or omissions of third parties for whom the Defendant has no
10 responsibility or liability.

11 **NINTH AFFIRMATIVE DEFENSE**

12 Princess has no legal responsibility for the damages or injuries alleged by
13 Plaintiff in the Complaint; however, in the event that Princess is held liable, any
14 liability being specifically denied by Princess, said liability will be due in whole or
15 in part to the acts, omissions, activities, failures, recklessness or negligence of
16 others. Accordingly, any recovery by the Plaintiff against Princess should be
17 reduced in proportion to the respective negligence, fault, or responsibility of all
18 other parties, persons, or entities, including their agents, servants, representatives, or
19 employees who contributed to or caused any injury or damages to Plaintiff, if any, in
20 accordance with the law governing comparative fault.

21 **TENTH AFFIRMATIVE DEFENSE**

22 Princess' liability, if any, must be reduced by the comparative amount of
23 liability and/or fault attributable to the Plaintiff for the reasons set forth in the
24 preceding and subsequent affirmative defenses and by reason of the decisions made
25 by and acts and omissions of Plaintiff.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 Any award of damages to Plaintiff should be reduced by any collateral source
28 payments paid to and/or received by Plaintiff.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 Plaintiff has failed to state a claim that any act or omission of Princess was
3 the substantial factor in causing the alleged injuries and damages set forth in
4 Plaintiff's Complaint.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's negligence, including but not limited to the failure to have medical
7 or travel insurance, failure to fully disclose Plaintiff's past medical history,
8 medications and medical conditions, failure to follow medical advice, and
9 negligence in maintaining Plaintiff's own health before the cruise, was the sole,
10 proximate cause of Plaintiff's alleged damages, if any, which Defendant specifically
11 denies.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 As a result of the conduct, acts or omissions of the Plaintiff, Plaintiff is
14 estopped from claiming the damages alleged in the Complaint.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 Plaintiff failed to seek timely and/or appropriate medical treatment for the
17 injuries alleged in the Complaint, and such failure exacerbated any such injuries to
18 the extent that any award of damages to Plaintiff must be proportionately reduced
19 accordingly.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 In the event Defendant is found to be negligent or otherwise liable,
22 Plaintiff's medical expense damages are limited to their reasonable value taking into
23 consideration all relevant evidence, including amounts billed, amounts paid,
24 amounts not submitted, amounts which Plaintiff is not required to pay, and any
25 discounts, write offs and set offs for amounts paid by third parties.

26 **SEVENTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff did not inform Defendant of any special needs as required by the
28 passage contract.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged incident was caused by a *force majeure* and/or Act of God. *Force Majeure's* and/or Acts of God are beyond Defendant's control. Defendant is not liable for any loss or injury arising from a *force majeure* and/or Act of God. Princess cannot be held responsible for Plaintiff's damages under applicable law and/or the terms of the Passage Contract.

NINETEENTH AFFIRMATIVE DEFENSE

There is no right to a jury trial for this matter.

TWENTIETH AFFIRMATIVE DEFENSE

The injury, damage or loss suffered by Plaintiff is legally caused by the negligent or willful failure of Plaintiff to follow the advice and instruction of Plaintiff's medical providers and in otherwise failing to exercise ordinary care on Plaintiff's own behalf.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Punitive damages are not recoverable in this action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the acts or omissions alleged to have been performed by Princess, if performed at all, were made in good faith and/or justified.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages and injuries resulted from unavoidable events and were not proximately caused by any alleged negligence or gross negligence on the part of Princess.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The alleged dangerous condition, if any, was apparent, open and obvious to the passengers of the subject vessel, including Plaintiff, and should have been observed by Plaintiff in the ordinary use of Plaintiff's senses.

///

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff had actual knowledge and/or notice of any alleged dangerous condition, if any, and realized and appreciated the potential for injury as a result of such alleged condition; and, having a reasonable opportunity to avoid it, consciously and voluntarily exposed herself to same.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant did not have notice of the allegedly unreasonably dangerous or defective condition.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant did not have notice of the allegedly dangerous condition, if any, and therefore did not have a duty to warn Plaintiff as to the existence of same.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant fully discharged its duties to the passengers of the subject vessel, including Plaintiff, by warning of any and all dangers and/or conditions unique to the vessel, if any.

TWENTY-NINTH AFFIRMATIVE DEFENSE

To the extent applicable, any award of damages to Plaintiff, if any, should be reduced by amounts of medical expenses billed but never actually paid. Plaintiff is not entitled to recover for discounts and write-offs.

THIRTIETH AFFIRMATIVE DEFENSE

Defendant asserts that Defendant Princess cannot be liable for the claimed medical negligence of medical doctors pursuant to the *Barbetta* doctrine as set forth in *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364 (5th Cir. 1988) which is the applicable law in the Ninth Circuit.

THIRTY-FIRST AFFIRMATIVE DEFENSE

That the Plaintiffs' action herein is barred by the provisions of California Civil Code section 1714.8 in that the injuries and damages complained of by the Plaintiff herein, if any, was solely as the result of the natural course of a disease or

1 condition and/or expected result of reasonable treatment rendered for the disease or
2 condition by the defendants herein.

3 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

4 That in the event this answering defendant is found to be negligent (which
5 supposition is denied and merely stated for the purpose of this affirmative defense),
6 this answering defendant may elect to introduce evidence of any amounts paid or
7 payable, if any as a benefit to the Plaintiff pursuant to California Civil Code section
8 3333.1.

9 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

10 That in the event this answering defendant is found to be negligent (which
11 supposition is denied and merely stated for the purpose of this affirmative defense),
12 the damages for non-economic losses shall not exceed the amount specified in Civil
13 Code section 3333.2.

14 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

15 That in the event this answering defendant is found to be negligent (which
16 supposition is denied and merely stated for the purpose of this affirmative defense),
17 this answering defendant may elect to have future damages, if in excess of the
18 amount specified in California Code of Civil Procedure section 667.7, paid in whole
19 or in part, as specified in Code of Civil Procedure section 667.7.

20 Princess reserves its right to add additional affirmative defenses as discovery
21 develops.

22 WHEREFORE, Princess prays judgment as follows:

- 23 1. That Plaintiff take nothing by way of the Complaint;
24 2. That the Court enter judgment for Princess;
25 3. For costs incurred in defense of this action; and
26 4. For such other and further relief as the Court may deem proper.

27
28

MALTZMAN & PARTNERS

5857 OWENS AVE, SUITE 300
CARLSBAD, CA 92008
TELEPHONE: (760) 942-9880

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: April 2, 2024

MALTZMAN & PARTNERS

By: s/ Edgar R. Nield
Jeffrey B. Maltzman
Edgar R. Nield
Gabrielle De Santis Nield
Attorneys for Defendant,
Princess Cruise Lines Ltd.